

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

DAVID DRONE,

Petitioner,

vs.

BRYAN BLEDSOE, Warden,

Respondent.

CIVIL ACTION NO. 3:10-1146

(KOSIK, D.J.)

FILED
SCRANTON

MAY 19 2011

PER J.M.
DEPUTY CLERK

MEMORANDUM AND ORDER

AND NOW, THIS 18 DAY OF MAY, 2011, IT APPEARING TO THE
COURT THAT:

- (1) Petitioner, David Drone, a prisoner confined at the United States Penitentiary, Lewisburg, Pennsylvania, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on April 21, 2010;
- (2) In his petition, petitioner challenges his designation to a special management unit ("SMU") on the grounds of double jeopardy and ex post facto;
- (3) The action was assigned to Magistrate Judge Malachy E. Mannion for Report and Recommendation;
- (4) On April 22, 2011, the Magistrate Judge issued a Report and Recommendation (Doc. 9) wherein he recommended that the petition for writ of habeas corpus be denied without prejudice to petitioner's right to pursue his claims in a properly filed civil rights action;
- (5) Specifically, the Magistrate Judge found that because the petition did not challenge the fact or duration of petitioner's confinement or did not seek immediate release, or a speedier release from imprisonment, the petitioner's claims should be pursued in a Bivens civil rights action;
- (6) Petitioner has failed to file timely objections to the Magistrate Judge's Report and Recommendation.

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F. 2d 874, 878 (3d Cir. 1987).

(8) We have considered the Magistrate Judge's Report and we concur with his recommendation.

(9) After reviewing the petition, we agree with the Magistrate Judge that Petitioner's claims are not properly pursued in a habeas corpus petition and that the petition should be denied without prejudice so that the petitioner may file a Bivens civil rights action challenging his placement in the SMU.

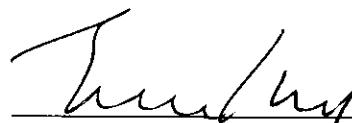
ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated April 22, 2011 (Doc. 9) is **ADOPTED**;

(2) The Petitioner's petition for writ of habeas corpus is **DENIED** without prejudice;

(3) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge; and,

(4) Based on the court's conclusion herein, there is no basis for the issuance of a certificate of appealability.



Edwin M. Kosik
United States District Judge